

## DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

AFFIDAVIT OF JOSEPH E. TILLMAN  
October 14, 1997

I, Joseph E. Tillman, am competent to testify to the facts stated herein and will so testify if called as a witness. I submit this affidavit in support of the objections to the eighth set of UPS interrogatories to Postal Service Witness Sharkey (UPS/USPS-T33-43 through 58).

1. I am Director of Finance for Menlo Postal Logistics, a division of Emery Worldwide Airlines, Inc. ("Emery"), 2850 Presidential Drive, Suite 200, Fairborn, OH. I have been so employed since April 28, 1997. My duties currently include an understanding of the financial details of the Priority Mail Processing Center ("PMPC") Contract between Emery and the United States Postal Service and the monitoring of Emery's financial and related statistical performance of that Contract.

2. The PMPC contract contains 106 pages of detailed pricing schedules developed by Emery specifically for the PMPC contract. The pricing schedules reflect fixed per-piece prices that Emery is charging the Postal Service for transporting flats, parcels, and outside pieces between each of ten Priority Mail processing centers ("PMPCs") and many Postal Service Air

EXHIBIT

ALL-STATE INTERNATIONAL

Mail Centers (“AMCs”) and Postal Service Area Distribution Centers (“ADCs”) across the country. The schedules also provide price adjustments for volume variations.

3. The detailed pricing information contained in these schedules reflect Emery’s experience in the industry and its own proprietary pricing strategy and analysis of costs and profits expected on the PMPC contract. The pricing schedules were developed at significant time and expense solely in connection with the preparation of Emery’s proposal for the PMPC contract. The table of contents for the PMPC contract also contains descriptive terms regarding unique technical and pricing ideas developed by Emery.

4. Revealing the confidential portions of the PMPC contract would reveal Emery’s proprietary pricing strategies and would be tantamount to the release of trade secrets and confidential commercial information. Specifically, such a release would give UPS and other competitors insight into Emery’s pricing strategy and would allow them to infer and predict not only Emery’s costs, but the profitability of particular routes between PMPCs and between PMPCs and ADCs/AMCs.

5. In addition to knowledge of Emery pricing strategies and technical ideas, releasing the PMPC contract would give UPS access to the price variations Emery believes are appropriate for transporting flats, parcels, and outsides between various city-pairs and regions. Coupled with its own knowledge of the freight transportation business, UPS could use this information to evaluate the profitability of various Emery routes and the extent to which certain routes are discounted. UPS could also evaluate which prices for flats, parcels, and outsides reflect discounts. The fact that the per-piece prices included on the PMPC pricing schedules exclude

certain elements of costs would allow UPS to conduct an even more specific analysis of Emery costs and pricing strategies.

6. UPS could use the results of its analysis of Emery's pricing strategies to evaluate its own ability to compete on routes already chosen by Emery and effectively focus upon and "cherry-pick" the Emery routes that will be most profitable to UPS. UPS could adjust its business to focus on Emery's profitable routes and leave Emery to struggle with the less profitable ones. Such unfair competition would cause substantial harm to Emery's competitive position in the air transportation market. Allowing UPS to profit from this information will likely cause Emery substantial competitive disadvantage.

7. Throughout proposal preparation, negotiation, and performance, both Emery and the Postal Service have treated the PMPC contract — including the table of contents and the Emery pricing schedules — as confidential. The PMPC contract itself limits access to subcontractors or prospective subcontractors who have executed a nondisclosure agreement with the Postal Service:

G.8 Nondisclosure Agreements

a. The offeror may distribute this RFP, or any resultant contract, or the USPS internally prepared design to subcontractors or prospective subcontractors who have executed Nondisclosure Agreements with the Postal Service. *No other distribution of the solicitation, or any resultant contract, is permitted.*

(PMPC Contract (Clause G.8) (emphasis added).) The PMPC contract precludes access by those in direct competition with Emery. Those who do have access are required to comply with the terms of the Nondisclosure Agreement.

8. The Nondisclosure Agreement, a copy of which is attached as Exhibit 1, specifies that only those who have a legitimate reason to know the information may have access to it. It strictly limits the available uses of the information and requires the recipient to instruct employees who have such access about the information's confidentiality.

9. Emery strictly limits access to the PMPC contract to those Emery employees who are actively engaged in work on the PMPC contract and who need to know the information it contains. Each employee with such access is instructed that the information is confidential and not to be disclosed.

10. Emery also strictly complies with the requirement that its subcontractors and prospective subcontractors execute a nondisclosure agreement with the Postal Service. Before discussing any portion of the PMPC contract, Emery requires that the prospective subcontractor sign a non-disclosure agreement and forward a copy of the signed agreement directly to the Postal Service. Only upon acknowledgment and receipt and complete execution by the Postal Service does Emery proceed with such discussions.

\_\_\_\_\_  
Joseph E. Tillman

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of October 1997.

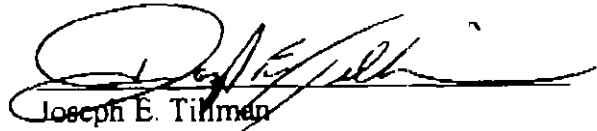
\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

8. The Nondisclosure Agreement, ~~a copy of which is attached as Exhibit 1, JT by BW~~ specifies that only those who have a legitimate reason to know the information may have access to it. It strictly limits the available uses of the information and requires the recipient to instruct employees who have such access about the information's confidentiality.

9. Emery strictly limits access to the PMPC contract to those Emery employees who are actively engaged in work on the PMPC contract and who need to know the information it contains. Each employee with such access is instructed that the information is confidential and not to be disclosed.

10. Emery also strictly complies with the requirement that its subcontractors and prospective subcontractors execute a nondisclosure agreement with the Postal Service. Before discussing any portion of the PMPC contract, Emery requires that the prospective subcontractor sign a non-disclosure agreement and forward a copy of that signed agreement directly to the Postal Service for acceptance and execution. Only upon acknowledgment and receipt and complete execution by the Postal Service does Emery proceed with such discussions with prospective subcontractors.

  
Joseph E. Tillman

State of New Jersey

County of Essex

Sworn to and subscribed before me

this 15 day of Oct 19 97

Subscribed and sworn to before me this 15 day of 10/14/97.

MARIA E. KIDD  
NOTARY PUBLIC OF NEW JERSEY  
C. 11/8/2002

  
Notary Public

My Commission expires: 8/2002

